



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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Dear Mr. [REDACTED]:

This is in response to your letter dated May 21, 2001, wherein you request general information as to whether corporations are currently required to furnish a written statement to employees who exercise incentive stock options.

Initially, section 6039(a) of the Code required that every corporation make a return to the Internal Revenue Service ("Service") in connection with the transfer or recordation of transfer of a share of stock acquired by any person pursuant to their exercise of a qualified stock option or a restricted stock option. This return requirement was repealed through an amendment to the Code effected by P.L. 96-167, effective December 31, 1979. In addition to repealing the return requirement, the amendment added a written statement requirement, refined by P.L. 101-508, effective July 22, 1998.

Currently, section 6039(a)(1) of the Code requires a corporation to furnish a statement in connection with the transfer of stock acquired by an employee of the corporation pursuant to his or her exercise of a section 422(b) incentive stock option. The corporation must furnish the written statement to the employee upon the first transfer of legal title of the stock to the employee.

Section 6039 also requires that the written statement, which is to be provided to the employee by the corporation, must be furnished in such manner and must set forth such information as the Secretary may by regulations prescribe. The Secretary has prescribed the form and content of the required statement in Treas. Reg. §§ 1.6039(a)(1) through (9) and 1.6039-1(b)(2)(i) through (v). However, these regulations currently exist in proposed form. As a result, because they are neither final nor temporary regulations, they are of no legal effect. Therefore, a corporation is not currently required to comply with the written statement requirement upon an employee's exercise of an incentive stock option. However, the written statement requirement will

become absolute upon the change in status of the regulations from proposed to final regulations.

If you have any questions please contact Rob Desilets, Jr. at (202) 622-4910.

Sincerely,

James C. Gibbons
Chief, Branch 1
Administrative Provisions and Judicial
Practice Division